

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: Highland Plating)	
	)	CERCLA Dkt. No R9-2015-0010
)	
	)	SETTLEMENT AGREEMENT
	)	AND ORDER ON CONSENT
	)	FOR REMOVAL ACTION BY
	)	BONA FIDE PROSPECTIVE
	)	PURCHASER PURSUANT TO
7007 W. Romaine (LA), LLC,	)	THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondent.	)	COMPENSATION, AND
	)	LIABILITY ACT, 42 U.S.C.
	)	§§ 9604, 9606, 9607, 9622

I. INTRODUCTION

1. This Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser ("Settlement Agreement") is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and 7007 W. Romaine (LA), LLC ("Purchaser") (collectively, the "Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601, *et seq.* Under this Settlement Agreement, Purchaser agrees to perform the requirements set forth in this Settlement Agreement at or in connection with the property located at 7007 W. Romaine Street, in Los Angeles, California (the "Property").

II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General to compromise and settle claims of the United States.

3. The Parties agree that the United States District Court for the Central District of California will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement Agreement.

4. EPA has notified the State of California (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. Purchaser represents that it is a bona fide prospective purchaser ("BFPP") as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply

with Section 101(40) in acquiring and during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the removal action and Purchaser's obligations to be undertaken in connection with the Property, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser's activities at the Property pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States), potential liabilities as set forth in Section XVIII (Covenant Not to Sue by the United States).

6. The resolution of potential liability, in exchange for Purchaser's performance of its obligation under this Settlement Agreement is in the public interest.

7. EPA and Purchaser recognize that this Settlement Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

III. PARTIES BOUND

8. This Settlement Agreement applies to and is binding upon EPA and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement Agreement.

9. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement, and, where appropriate, receive a copy of this Settlement Agreement. Purchaser shall be responsible for any noncompliance with this Settlement Agreement.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

- a. "BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 - 9675.
- c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Settlement Agreement, where the

last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

- d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVII.
- e. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Existing Contamination" shall mean:
 - i any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;
 - ii any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
 - iii any hazardous substances, pollutants or contaminants presently at the Property that migrate onto or under or from the Site after the Effective Date.
- h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- i. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- j. "OSC" shall mean the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.
- k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an arabic numeral or a lower case letter.
- l. "Parties" shall mean EPA and Purchaser.
- m. "Property" shall mean that portion of the Site, encompassing approximately one acre, located at 7007 W. Romaine Street in Los Angeles, Los Angeles County, California, and further identified as Lots 46, 47, 48 and 49 of Tract 4685 in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 51, Page 13 of Maps, in the Office of the County Recorder of said County Assessor's Parcel Nos. 5532-030-011, 5532-030-012 and 5532-030-013.

- n. "Purchaser" shall mean 7007 W. Romaine (LA), LLC, a Delaware limited liability company.
- o. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- p. "Settlement Agreement" shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXV). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- q. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 – 6992 (also known as the Resource Conservation and Recovery Act).
- r. "Site" shall mean the Highland Plating Company, Inc. Superfund Removal Site, encompassing approximately one acre, located at 7007 W. Romaine Street in Los Angeles, Los Angeles County, California. The Site includes all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.
- s. "Supervising Contractor" shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of any work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such work.
- t. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. FINDINGS OF FACT

11. The Property is located in an area of mixed commercial/residential uses including movie production studios and offices, retail stores, restaurants, and residential buildings.

12. Highland Plating Company conducted metal plating operations at the Property in two buildings (the "Facility"). Highland Plating Company conducted chrome, nickel, copper, and gold plating and anodizing in three plating lines contained in the eastern-most building, and conducted buffing and polishing in the western-most building at the Property. Highland Plating Company conducted these operations at the Property from approximately 1964 to 2014.

13. A catastrophic fire occurred at the Property on July 13, 2014, completely destroying the roof and compromising the integrity of the eastern building. The heat from the fire resulted in the failure of several plating line vats, sending their corrosive and caustic solutions into secondary containment, which became overwhelmed by the approximate one million gallons

of fire suppression water, in addition to the plating chemicals from the vats. Significant amounts of runoff containing this mixture of water and chemicals was released from the building and a large amount of runoff entered the storm drain. Partial demolition of the eastern building has revealed that the remaining masonry and slab structure, as well as the underlying soils, contain elevated levels of cyanide, zinc, and chromium. Corrosive liquids and sludges containing hydrochloric acid and sodium hydroxide remain at the Property.

14. On July 17, 2014, EPA issued notice to Highland Plating Company and its owners, Max and Drusilla Faeth ("Responsible Owners"), of potential obligations for response actions or costs under CERCLA to address hazardous substances at the Site, and which EPA revised on July 24, 2014. Concerned with the lack of progress addressing hazardous substances at the Site, EPA provided further instruction and schedules on September 16, 2014. On October 15, 2014, EPA determined that conditions at the Site presented an imminent and substantial endangerment to the public health or welfare or the environment, and determined an applicable response action. The Responsible Owners thereafter committed to EPA to conduct the response action properly and promptly. EPA undertook oversight of the Responsible Owners' voluntary efforts to conduct the response action, and provided the Responsible Owners continued instruction of necessary work and appropriate schedules to conduct the work. To date, the Responsible Owners have failed to complete the necessary response actions, including the removal of remaining hazardous substances within the Facility, removal of hazardous debris, characterization of the Facility structure and removal of contaminated soils. The Responsible Owners' response efforts have been further hampered by difficulties complying with the worker health and safety requirements applicable to hazardous waste operations, specifically those set forth at 29 C.F.R. § 1910.120. EPA has continued to provide written notice of the Responsible Owners' deficiencies and its failure to meet timely and appropriate schedules. EPA's correspondence with the Responsible Owners, including the anticipated work required and schedules, is included in the administrative record for the Site.

15. Populations at risk of exposure to the contaminants from the Site include onsite workers, and nearby populations of residents and workers.

16. The Site is not currently on nor proposed for inclusion on the National Priorities List.

17. Contaminants at the Property include cyanide, heavy metals including chromium and zinc, as well as corrosive sludges and liquids. Cyanide is readily absorbed through the skin and mucous membranes and by inhalation, and exposure may cause anxiety, nausea, convulsions, paralysis, coma, cardiac arrhythmia, and transient respiratory stimulation followed by respiratory failure or death. Chromium is a toxic heavy metal that is an inhalation, ingestion, and dermal exposure risk, and exposure may cause harmful effects to the gastrointestinal system, to the skin, lungs, and mucous membranes. Zinc is a toxic metal and exposure may cause injury to mucous membranes and skin. Corrosive liquids and sludges containing hydrochloric acid and sodium hydroxide can burn the skin, eyes and mucous membranes on dermal contact, and may be moderately irritating to the respiratory tract when inhaled.

18. EPA has had no prior assessments, responses or enforcement actions related to the Property and is unaware of any such actions by the State. Since undertaking acquisition of the Property, Purchaser has been conducting diligence with respect to the environmental conditions at the Property and cooperated with EPA and the State. Purchaser intends to excavate the Property to one level of subgrade, and to construct a new structure with underground parking. EPA anticipates that the excavation will remove any residual contamination from the fire at the Property and that, regardless of residual contamination, the new structure will serve as a form of cover mitigating any future exposure to any remaining contamination.

19. After Purchaser acquired the Property from the Responsible Owners, and subject to the oversight of EPA, Purchaser continued the response to hazardous substances from the Facility that presented the most immediate threat of exposure or endangerment. By Pollution Report dated December 4, 2015, EPA determined that Purchaser had completed the immediate response action. Low levels of contaminants may remain at the Property. The Parties also anticipate that additional contamination may be discovered in the course of Purchaser's further construction activities at the Property.

20. The Administrative Record supporting this action is available for review at the EPA Region IX Records Center, located at 75 Hawthorne Street, San Francisco, California (94105).

VI. DETERMINATIONS

21. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Property is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Property, as identified in but not limited to the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Purchaser is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The conditions described in Section V (Findings of Fact) above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- e. The obligations provided in this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VII. SETTLEMENT AGREEMENT

22. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVIII Purchaser agrees to comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. WORK TO BE PERFORMED

23. Purchaser shall perform, at a minimum, all actions necessary to implement the actions described in this Settlement Agreement. The actions to be implemented generally include, but are not limited to certifying the completion of response actions conducted at the Property and, if necessary during the course of future excavation at the Property, implementing plans, subject to EPA approval, for the sampling, characterization and disposal of hazardous substances at the Property.

24. Within thirty (30) days after the Effective Date, Purchaser shall submit for EPA review a final report summarizing the response actions conducted at the Property. EPA will review the final report in accordance with Section XXVI (Notice of Completion of Work). The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, "OSC Reports." The final report shall include a statement of actual costs incurred in undertaking the response actions, a listing of quantities and types of materials removed from the Property or handled at the Property, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

25. Purchaser shall provide notice as soon as practicable to EPA of any soil contamination identified in the course of any further excavation at the Property that exceeds state or federal response action thresholds (i.e., TTLC) or presents visible staining. Purchaser shall also provide notice to EPA of the completion of the excavation at the Property anticipated in Paragraph 18, as inspected and approved by the applicable local oversight agency.

26. If EPA determines that additional response actions to address any additional contamination discovered during the course of future excavation at the Property that exceeds state or federal response action thresholds (i.e., TTLC) or presents visible staining are necessary to protect public health, welfare, or the environment, EPA will notify Purchaser of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice

from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Purchaser shall submit for approval by EPA a work plan, sampling and analysis plan ("SAP") and health and safety plan ("HASP") for any additional removal actions. The plan shall conform to the applicable requirements of Section IX (Additional Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 30 (Work Plan and Implementation), Purchaser shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Paragraph does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXIV (Modification).

IX. ADDITIONAL WORK TO BE PERFORMED

27. In the event that EPA determines that additional response actions are necessary pursuant to Paragraph 26 above to protect public health, welfare, or the environment, Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all actions required on the Property pursuant to this Settlement Agreement shall, to the extent practicable, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Purchaser shall identify ARARs in any work plan that may be required pursuant to this Section and subject to EPA approval.
28. Security. Site security shall be required immediately following a notice of determination that additional response actions are required pursuant to Paragraph 26, subject to modification or termination as EPA may approve in any work plan, or until the termination of this Settlement Agreement.
29. For any regulation or guidance referenced in the Settlement Agreement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Purchaser receives notification from EPA of the modification, amendment, or replacement.
30. Work Plan and Implementation.
 - a. In the event that EPA determines that additional response actions are necessary pursuant to Paragraph 26 above to protect public health, welfare, or the environment, Purchaser shall submit to EPA for review and approval a draft work plan for performing the additional removal actions (the "Removal Work Plan") as described in Paragraph 26 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the additional response action required by this Settlement Agreement.
 - b. In the event that Purchaser submits a draft Removal Work Plan to EPA pursuant to Paragraph 30a above, EPA may approve, disapprove, require revisions to, or

modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Removal Work Plan within seven (7) business days after receipt of EPA's notification of the required revisions. Purchaser shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

- c. In the event that the submission of a Removal Work Plan is required pursuant to Paragraph 30a above, upon approval or approval with modifications of the Removal Work Plan Purchaser shall commence implementation of the additional response activity in accordance with the schedule included therein. Purchaser shall not commence any additional response action except in conformance with the terms of this Settlement Agreement. Purchaser shall notify EPA at least 48 hours prior to performing any additional response action at the Property pursuant to the EPA-approved Removal Work Plan.
- d. In the event that the submission of a Removal Work Plan is required pursuant to Paragraph 30a above, unless otherwise provided in this Settlement Agreement, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

31. Submission of Deliverables

a. General Requirements for Deliverables.

Except as otherwise provided in this Settlement Agreement, Purchaser shall direct any submissions required by this Settlement Agreement to the OSC at:

Robert Wise
United States Environmental Protection Agency
2445 North Palm Drive, Suite 100
Signal Hill, CA 90755
(562) 889-2572
wise.robert@epa.gov.

Purchaser shall submit any deliverables required by this Settlement Agreement or any approved work plan, as applicable, to EPA in accordance with the schedule set forth in such plan. Purchaser shall submit all deliverables in Electronic Data Deliverable (EDD) format, which may include Word (.doc) or Acrobat files (.pdf). If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Purchaser shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

- i. Sampling and monitoring data should be submitted in standard regional EDD format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - ii. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
 - iii. Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.
 - iv. Spatial data submitted by Purchaser does not, and is not intended to, define the boundaries of the Site.
32. Sampling and Analysis Plan. The SAP, if it is required pursuant to Paragraph 26 above, shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002) and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006). Should a SAP be required pursuant to Paragraph 26 above, upon its approval by EPA, it shall be incorporated into and become enforceable under this Settlement Agreement.
33. Site Health and Safety Plan. The HASP, if it is required pursuant to Paragraph 26 above, shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep/index.html>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan, if it is required pursuant to Paragraph 26 above, shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. Should a HASP be required pursuant to Paragraph 26 above, the plan shall also include if EPA determines that it is appropriate, contingency planning. Should a HASP be required pursuant to Paragraph 26 above, Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

34. Community Involvement. In the event that EPA determines that additional response actions are necessary pursuant to Paragraph 26 above to protect public health, welfare, or the environment, prior to performing any response action on-Site pursuant to an EPA-approved Removal Work Plan, Purchaser shall provide at least 48 hours notice to all owners or operators of real property adjacent to the Property.

35. Progress Reports. In the event that EPA determines that additional response actions are necessary pursuant to Paragraph 26 above to protect public health, welfare, or the environment, Purchaser shall submit a written progress report to EPA concerning any additional response actions undertaken pursuant to this Settlement Agreement as requested by EPA, from the date of receipt of EPA's approval of a Removal Work Plan until issuance of a Notice of Completion of Work pursuant to Section XXVI, unless otherwise directed in writing by the OSC. These reports, as applicable, shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Final Report. In the event that EPA determines that additional response actions are necessary pursuant to Paragraph 26 above to protect public health, welfare, or the environment, within thirty (30) days after completion of any additional response actions required by this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including record retention, Purchaser shall submit for EPA review a revised final report, to be submitted and reviewed consistent with the provisions of Paragraph 24 of this Settlement Agreement.

36. Off-Site Shipments.

- a. Purchaser may ship Waste Material from the Property to an off-site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Purchaser may ship Investigation Derived Waste from the Property to an off-site facility only if it complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).
- b. Purchaser may ship Waste Material from the Property to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and

(4) the method of transportation. Purchaser shall also notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the notice after the award of the contract for the removal action and before the Waste Material is shipped.

X. AUTHORITY OF THE ON-SCENE COORDINATOR

37. The OSC shall be responsible for overseeing Purchaser's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any response actions required by this Settlement Agreement, or to direct any other response action undertaken at the Property. Absence of the OSC from the Property shall not be cause for stoppage of work unless specifically directed by the OSC.

XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

38. Purchaser agrees to provide EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property owned or controlled by Purchaser to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to Purchaser of the timing of response actions to be undertaken at the Property and other areas owned or controlled by Purchaser. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and other authorities.
39. Purchaser shall submit to EPA for review and approval a notice to be filed with the Los Angeles County Recorder's Office, which shall provide notice to all successors-in-title that the Property is part of the Site, and that EPA has released and waived its Section 107(r) lien on the Property in this Agreement in accordance with Section XXII (Release and Waiver of Lien). Purchaser shall record the notice(s) within fifteen (15) days of EPA's approval of the notice(s). Purchaser shall provide EPA with a certified copy of the recorded notice(s) within fifteen (15) days of recording such notices.
40. Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with any additional response actions addressed in Section IX of this Settlement Agreement.
41. For so long as Purchaser is an owner or operator of the Property, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with

a response action, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.

42. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. Purchaser shall require that each grantee, transferee or other holder of an interest in the Property or any part thereof shall implement and comply with any land use restrictions and institutional controls on the Property in connection with a response action and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Property.
43. Purchaser shall provide a copy of this Agreement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

44. Purchaser shall preserve all documents and information relating to its response actions at the Property for 10 years after receipt of a Notice of Completion pursuant to Section XXVI of the Settlement Agreement, and shall submit them to EPA upon completion of such work required by this Settlement Agreement, or earlier if requested by EPA.
45. Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as privileged or confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

XIII. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to this Section.
47. If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Settlement Agreement or objects to any EPA action taken pursuant to this Settlement Agreement, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within 15 days of

receipt of Purchaser's notice. EPA and Purchaser shall have 60 days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.

48. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Region 9 Director of Superfund Division level will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XIV. FORCE MAJEURE

49. Purchaser agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete any additional response actions that may be required by this Settlement Agreement in the future as a result of a potential EPA determination pursuant to Paragraph 26 above that additional response actions to address any additional contamination discovered during the course of future excavation at the Property are necessary to protect public health, welfare, or the environment.
50. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify EPA orally within 30 days of when Purchaser first knew that the event might cause a delay. Within 15 days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

51. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.
52. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Purchaser shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 50 and 51 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement.

XV. STIPULATED PENALTIES

53. Purchaser shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 54 for failure to comply with the requirements of this Settlement Agreement, unless excused under Section XIV (*Force Majeure*). "Compliance" by Purchaser shall include completion of the obligations under this Settlement Agreement and any work plan or other plan approved under this Settlement Agreement in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.
54. Stipulated Penalty Amounts.

The following stipulated penalties shall accrue per violation per day for any noncompliance identified by EPA pursuant to Paragraph 53:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1000	15th through 30th day
\$2000	31st day and beyond

55. In the event that EPA assumes performance of a portion or all of any additional removal actions pursuant to Paragraph 70 of Section XIX (Reservation of Rights by United States), Purchaser shall be liable for a stipulated penalty in the amount of \$ 50,000.

56. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed) or Section IX (Additional Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; and 2) with respect to a decision by the EPA Management Official under Paragraph 48 of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.
57. Following EPA's determination that Purchaser has failed to comply with a requirement of this Settlement Agreement, EPA may give Purchaser written notification of the failure and describe the noncompliance. EPA may send Purchaser a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Purchaser of a violation.
58. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Purchaser's receipt from EPA of a demand for payment of the penalties, unless Purchaser invokes the dispute resolution procedures under Section XIII (Dispute Resolution). All payments to EPA under this Section shall be paid by Electronic Funds Transfer ("EFT") in accordance with the following EFT procedures:

Federal Reserve Bank of New York
ABA=021030004
Account=68010727
SWIFT address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Payments shall indicate that the payment is for stipulated penalties, and shall reference the name and address of Purchaser, the Site name, EPA Region IX and Site/Spill ID Number A963, and the EPA Docket Number of this Settlement Agreement. Copies of payment information and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 31, and to:

Linda Ma
U.S. Environmental Protection Agency, Region 9
(SFD-6)
75 Hawthorne Street
San Francisco, California 94105

59. The payment of penalties shall not alter in any way Purchaser's obligation to complete performance of the obligations required under this Settlement Agreement.
60. Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 56 above, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.
61. If Purchaser fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Purchaser shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 57. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVI. FINANCIAL RESPONSIBILITY

62. The Parties agree and acknowledge that, in the event Purchaser ceases implementation of or otherwise fails to complete any additional response actions that may be required in the future pursuant to Section IX of this Settlement Agreement, Purchaser shall ensure that EPA is held harmless from or reimbursed for all costs required for completion of the such work. For these purposes, Purchaser shall establish and maintain Financial Responsibility for the benefit of EPA in the amount of \$500,000.00 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, each of which must be satisfactory in form and substance to EPA:
- a. A surety bond unconditionally guaranteeing payment and/or performance of Work;
 - b. One or more irrevocable letters of credit, payable to or at the direction of EPA;
 - c. A trust fund established for the benefit of EPA;
 - d. A policy of insurance that provides EPA with acceptable rights as a beneficiary;
 - e. A demonstration by Purchaser that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or
 - f. A written guarantee to fund or perform the necessary additional response actions executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Purchaser, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Purchaser; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. §

264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

63. The commencement of any Work Takeover pursuant to Paragraph 70 of this Settlement Agreement (Work Takeover) shall trigger EPA's right to receive the benefit of any Financial Responsibility mechanism(s) provided pursuant to Paragraph 62.a, 62.b, 62.c, 62.d, or 62.f, and at such time EPA shall have immediate access to resources guaranteed under any such Financial Responsibility mechanism(s), whether in cash or in kind, as needed to complete any additional response actions required pursuant to Paragraph 26 above. In the event that the Financial Responsibility mechanism involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 62.e, then, after the commencement by EPA of any Work Takeover pursuant to Paragraph 70 of this Settlement Agreement (Work Takeover), Purchaser shall immediately upon written demand from EPA deposit into an account specified by EPA a cash amount up to but not exceeding the Estimated Cost of the Work as of such date, as determined by EPA and notified to Purchaser, which amount shall be used for the sole purpose of completing additional response actions on the Property pursuant to this Settlement Agreement.
64. If Purchaser desires to reduce the amount of any Financial Responsibility mechanism(s), change the form or terms of any Financial Responsibility mechanism(s), or release, cancel or discontinue any Financial Responsibility mechanism(s) because the obligations have been fully and finally completed in accordance with this Settlement Agreement, Purchaser shall make this request to EPA in writing and EPA shall either approve or disapprove the request in writing.

XVII. CERTIFICATION

65. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

XVIII. COVENANT NOT TO SUE BY UNITED STATES

66. In consideration of the actions that will be performed by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations

under this Settlement Agreement. This covenant not to sue extends only to Purchaser and does not extend to any other person.

XIX. RESERVATION OF RIGHTS BY UNITED STATES

67. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary.

68. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a liability for failure by Purchaser to meet a requirement of this Settlement Agreement;
- b criminal liability;
- c liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d liability for violations of federal, state, or local law or regulations during or after implementation of any removal actions other than as provided in the Removal Action Work Plan, or otherwise ordered by EPA;
- e liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
- g liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

69. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

70. Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of any additional response actions required pursuant to Section IX, is seriously or repeatedly deficient or late in its performance of any additional response actions required

pursuant to Paragraph 26 above, or is implementing such additional response actions in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the additional response actions as EPA determines necessary. Prior to taking over the additional response actions, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with 30 days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the additional response actions is warranted under this Paragraph. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any Financial Responsibility mechanism provided pursuant to Section XVII (Financial Responsibility) of this Settlement Agreement. Such access shall be for the sole purpose of completing the additional response actions that may be required pursuant to Section IX of this Settlement Agreement. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY PURCHASER

71. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Existing Contamination or any additional response actions pursuant to Section IX, or this Settlement Agreement, including, but not limited to:

- a any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b any claim arising out of response actions, including any claim under the United States Constitution, the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

72. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

73. Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under

circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's plans, reports, other deliverables, or activities.

XXI. CONTRIBUTION

74. Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

75. If a suit or claim for contribution is brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC) or any additional response actions taken pursuant to Section IX, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination, including any additional response action taken pursuant to Section IX.

76. If Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of the response action taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

77. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

78. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify the United States in writing within 10 days of service of the complaint on it.

XXII. RELEASE AND WAIVER OF LIEN(S)

79. Subject to the Reservation of Rights in Section XIX of this Settlement Agreement, upon satisfactory completion of the obligations specified in Section VIII (Work to be Performed), Section IX (Additional Work to be Performed) and the payment of any penalties due under Section XV (Stipulated Penalties), EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXIII. INDEMNIFICATION

80. Purchaser shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out the obligations pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out the obligations pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

81. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

82. Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of response activities on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of response activities on or relating to the Property, including, but not limited to, claims on account of construction delays.

XXIV. MODIFICATION

83. The OSC may make minor modifications to any plan or schedule in writing or by oral direction for any additional response actions required in Section IX. Any oral modification will be memorialized in writing by EPA within forty-eight (48) hours, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

84. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the OSC.

85. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXV. APPENDICES

86. There are no appendices attached or incorporated into this Settlement Agreement.

XXVI. NOTICE OF COMPLETION

87. After receiving notice of the completion of excavation activities pursuant to Paragraph 25, when EPA determines following EPA's review of the Final Report, that all obligations have been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Property in accordance with Paragraph 5 of this Settlement Agreement, any post-removal site controls and record retention, EPA will provide written notice to Purchaser. If EPA determines that any such obligations have not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the work plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved work plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified work plan shall be a violation of this Settlement Agreement.

XXVII. EFFECTIVE DATE

88. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that EPA has fully executed the Settlement Agreement after review of and response to any public comments received in accordance with Section XXXI (Public Comment).

XXVIII. DISCLAIMER

89. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property nor constitutes any representation by EPA that the Property is fit for any particular purpose.

XXIX. PAYMENT OF COSTS

90. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

XXX. NOTICES AND SUBMISSIONS

91. Except as otherwise noted in this Settlement Agreement, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

Miguel Padilla
7007 W. Romaine (LA), LLC
4700 Wilshire Boulevard
Los Angeles, CA 90010

With copies to:

Julia E. Stein
Pillsbury Winthrop Shaw Pittman LLP
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017

Submissions to U.S. EPA shall be addressed to the OSC, as directed for the submission of other deliverables.

XXXI. PUBLIC COMMENT

92. This Settlement Agreement shall be subject to a thirty-day (30) public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

IT IS SO AGREED:

7007 W. Romaine (LA), LLC
a Delaware limited liability company

By: 

Shaul Kuba, Vice President

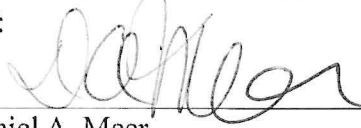
Date:

3/16/16

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Daniel A. Meer

Assistant Director

Superfund Division

Environmental Protection Agency Region IX

14 April 2016

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Assistant Attorney General Date

Environment and Natural Resources Division


U.S. Department of Justice

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

Daniel A. Meer
Assistant Director
Superfund Division
Environmental Protection Agency Region IX

Date

IT IS SO AGREED:
UNITED STATES DEPARTMENT OF JUSTICE
BY:

 4/27/16

Ellen M. Mahan
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date